IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.50 of 2003

Reserved on.24.4.2007

Decided on.1.6.2007

H.P.S.E.B. & another. **…Petitioners.**

Versus

Balak Ram and another. **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioners : **Mr. Shrawan Dogra, Advocate**

For the respondent No.1 **Mr. Ramakant Sharma, Advocate.**

Rajiv Sharma, J.

This petition is directed against the order of the Appellate Authority-cum-Joint Labour Commissioner dated 16th November, 2000.

The brief facts necessary for the adjudication of this petition are that the respondent No.1 (hereinafter referred to as the workman for convenience) was engaged as daily rated Beldar with effect from 26.8.1993 upto 3rd June, 1995. The workman was thereafter regularized as 'T' mate. He retired as 'T' Mate from the service of the Board on 31.12.1998. He filed an application under section 7 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the Act) before the Controlling Authority (Labour Officer). The Controlling Authority vide order dated 20.3.2001 directed the Board to pay the workman a sum of Rs. 34,238/- within 30 days on the receipt of the notice. Feeling aggrieved by the order dated 20th March, 2001, the Board had filed an application under

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes

section 151 of the Code of Civil Procedure seeking review of order dated 20th March, 2001 before the Controlling Authority. The Controlling Authority rejected the review application of the Board on 4.7.2001. Feeling aggrieved by the orders passed by the Controlling Authority the Board had filed appeal through its Superintending Engineer (OP) Circle H.P. and Additional Superintending Engineer, Electrical Division, HPSEB, Bilaspur before the Appellate Authority. The Appellate Authority decided the appeal on 16th November, 2002 and had directed the Board to make the payment of Rs. 54,567/- towards the gratuity to the workman.

Mr. Shrawan Dogra, Advocate appearing on behalf of the Board has strenuously argued that the orders passed by the Controlling Authority and the Appellate Authority are not in accordance with law. Mr. Dogra has elaborated his submission further by submitted that the period the workman was engaged as a Beldar with effect from 26.8.1983 to 3.6.1995 was to be calculated under the Payment of Gratuity Act, 1972 and after the regularization of the workman the period from 1995 to 31.12.1998 is to be counted under the CCS (Pension) Rules, 1972.

Mr. Ramakant Sharma, Advocate appearing on behalf of the workman has submitted that the orders passed by the Controlling Authority and Appellate Authority dated 16th November, 2002 are in accordance with law.

I have heard the parties and perused the record.

It will be apt to reproduce the relevant provisions of the Payment of Gratuity Act, 1972 to appreciate the rival submissions of the parties. Section 1(3) (b) and 4 which read as under:

"1 (3) It shall apply to –

"(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."

4. Payment of gratuity.- (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered "*continuous service"* for not less than five years,-

a) on his superannuation, or

b) on his retirement or resignation, or

c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement.

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation.-For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of *wages last drawn* by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages

received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of (an employee who is employed in a seasonal establishment and who is not so employed throughout the year), the employer shall pay the gratuity at the rate of seven days' wages for each season.

[Explanation.-In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty- six and multiplying the quotient by fifteen].

In Black's Law Dictionary 6th Edition, the word 'continuous" is assigned the following meaning:

"Continuous. Uninterrupted; unbroken; not intermittent or occasional; so persistently repeated at short intervals as to constitute virtually an unbroken series. Connected, extended, or prolonged without cessation or interruption of sequence."

In "Words and Phrases" (Permanent Edition) Vol.9, the word "continuous employment" is assigned the following meaning:

"Word "continuous" means without break, cessation, or interruption, uninterrupted, or unbroken, and "continuous service" is that which is practically uninterrupted. Kennedy v. Westinghouse Elec. Corp., 101 A.2d 592, 595, 596, 29 N.J. super. 68."

The expression "continuous service" came for consideration before the Supreme Court in M/s Jeewanlal (1929) Ltd. Calcutta Vs. Its workmen, AIR 1961 SC 1567. Their Lordship of the Supreme Court have held as under:

""continuous service" in the context of the scheme of gratuity framed by the tribunal in the earlier reference postulates the

continuance of the relationship of master and servant between the employer and his employees."

It is evident from the plain reading of the expression 'continuous service' that the entire period of the workman i.e from the date of initial engagement on daily wage basis and thereafter on regular basis is to be taken into consideration for the payment of gratuity. The prayer of Mr. Shrawan Dogra, Advocate that the period when the workman was engaged on daily wage basis is to be treated separately vis-à-vis regular period is untenable. This kind of situation is not stipulated under the Payment of Gratuity Act, 1972. This Court is of the firm opinion that the expression 'continuous service' has to be given plain meaning. It can also be viewed from another angle. If the contention of Mr. Sharwan Dogra, Advocate is accepted, it may lead to an anomalous situation. In the present case the workman had put in daily wage service with effect from 1983 to 1995 and thereafter he was regularized only with effect from 1995 to 31.12.1998 for four years, though as per CCS (CCA) Rules, 1965, the minimum period prescribed for the payment of gratuity is five years. This situation is not warranted under the expression 'continuous service'. The intention of the Legislature is to grant the gratuity for the entire continuous period when the workman is engaged till he attains the age of superannuation without dividing the period on artificial basis. The further period with effect from 1983 to 31.12.1998 has to be treated as one block for the payment of gratuity under the Payment of Gratuity Act, 1972. It is a case where "the golden rule of construction" will apply i.e. to read the statutory language grammatically and terminologically in the ordinary and primary sense as it appears in its contents without omission and addition.

The Apex Court has held in ***Maharashtra State Financial Corporation Vs. Jaycee Drugs and Pharmaceuticals Pvt. Ltd. and others***, 1992 (2) SCC 637 as under:

> **"It is a settled rule of interpretation of statutes that if the language and words used are plain and unambiguous, full effect must be given to them as they stand and in the garb of finding out of the intention of the legislature no words should be added thereto or substracted therefrom. Likewise, it is again a settled rule of interpretation that statutory provisions should be construed in a manner which subserves the purpose of the enactment and does not defeat it and that no part thereof is rendered surplus or otiose. The aforesaid interpretation of sub-section (11) of section 32 of the Act is not only in conformity with the rule of interpretation referred to above, it also does not militate in any way with the concept of an application under section 31(1) of the Act, not being a plaint in a suit for recovery of money."**

The Apex Court in Mohan Kumar Singhania and others, 1992 Supp. (1) SCC 594 has held as under:

> **"Before we cogitate and analyse this bone of contention in some detail, it will be convenient at this stage to pore over some of the well established rules of construction which would assist us to steer clear of the impasse entertained by the learned counsel, according to whom some complications are created by the impugned notification being ultra vires clause (iii-a) of Regulation 4 of Regulations, 1955.**
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> ***Maxwell on the Interpretation of Statutes*** **(10th edn. At p.7) says thus:**

"…if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result."

In *Principles of Statutory Interpretation* by Justice G.P. Singh, (4th edn., 1988, at p. 18) it is stated thus:

"It is a rule now firmly established that the intention of the legislature must be found by reading the statute as a whole."

It is said in *Craies on Statute Law*, (5th edn.) as follows:

"Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided."

In the same textbook, (6th edn. At p. 89) the following passage is found:

"The argument from inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of constructions."

Viscount Simon in *Kind Emperor v. Benoari Lal Sarma* has said thus: (AIR head note)

"In construing enacted words the Court is not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used."

In Waburton v. Loveland it is observed that:

"Where the language of the Act is clear and explicit, we must give effect to it whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."

Se also *Suffers v. Briggs*.

This Court in *CIT v. S. Teja Singh* has expressed that a construction which would defeat the object of legislature must, if that is possible, be avoided.

See also *M. Pentiah v. Muddala Veeramallappa*.

Desai, J. speaking for the bench in *Lt. Col. Prithi Pal Singh Bedi v. Union of India* has pointed out as follows: (SCC p. 150, para 8)

"The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognized canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the court should adopt literal construction if it does not lead to any absurdity."

The Constitution Bench of this Court in *A.R. Antulay v. R.S. Nayak* has observed thus: (SCC pp. 518-19, para 18)

"It is a well established canon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience; nor does any canon of construction permit the court to read the section in such manner as to render it to some extent otiose."

The Supreme Court in *Maharashtra State Board of Secondary and high Secondary Education v. Paritosh*

Bhupeshkumar Sheth **ruled that the well established doctrine of interpretation is (SCC p. 47, para 20)**

> **"that the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic."**

In ***Philips India Ltd. V. Labour Court, Madras*** **it is observed: (SCC p.112, para 15)**

> **"No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction** ***ex visceribus actus*****."**

It has been held by this Court in ***Balasinor Nagrik Cooperative Bank Ltd. V. Babubhai Shankerlal Pandya*** **as follows (para 4)**

> **"It is an elementary rule that construction of a section is to be made of all parts together. It is not permissible to omit any part of it. For, the principle that the statute must be read as a whole is equally applicable to different parts of the same section".**

In ***Dr. Ajay Pradhan v. State of M.P.*** **the Court has registered its view in the matter of construing a statute thus: (para 7)**

> **"if the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense and given them full effect. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament, and not for the courts, to consider."**

We think, it is not necessary to proliferate this judgment by citing all the judgments and extracting the textual passages from the various textbooks on the principles of Interpretation of Statutes. However, it will suffice to say that while interpreting a statute the consideration of inconvenience and hardships should be avoided and that when the language is clear and explicit and the words used are plain and unambiguous, we are bound to construe them in their ordinary sense with reference to other clauses of the Act or Rules as the case may be, so far as possible, to make a consistent enactment of the whole statute or series of statutes/rules/regulations relating to the subject matter, Added to this, in construing a statute, the Court has to ascertain the intention of the law making authority in the backdrop of the dominant purpose and the underlying intendment of the said statute and that every statute is to be interpreted without any violence to its language and applied as far as its explicit language admits consistent with the established rule of interpretation.

The Supreme Court in ***Oswal Agro Mills Ltd. And others. V. Collector of Central Excise and others***,1993 Supp (3) SCC 716, has held under:

> **"The provisions of the tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub heading under which the identified goods/products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules or interpretation put up thereon. For exigibility to excise duty the entity must be specified in positive terms under a particular tariff entry. In its absence it must be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in taxing statute. Nothing is implied. Neither can we insert nor can we delete anything but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or rules. There is no room for assumption or presumptions. The object of the Parliament has to be gathered from the language used in the statue. The contention that toilet soap is commercially different from household and laundry soaps, as could be seen from the opening words of Entry 15, needs careful analysis. It is well, at the outset, to guard against confusion between the meaning and the legal effect of an expression used in a statute. Where the words of the state are plain and clear, there is no room for applying any of the**

principles of interpretation which are merely presumption in cases of ambiguity in the statue. The court would interpret them as they stand. The object and purpose has to be gathered from such words, themselves. Words should not be regarded as being surplus nor be rendered otiose. Strictly speaking there is no place in such cases for interpretation or construction except where the words of statute admit of two meanings. The safer and more correct course to deal with a question of construction of statute is to take the words themselves and arrive, if possible, at their meaning, without, in the first place, reference to cases or theories of construction. Let us, therefore, consider the meaning of the word soap 'household'. The word household signifies a family living together. In the simplistic language toilet soap being used by the family as household soap is too simplification to reach a conclusion. Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about. The task of interpretation of the statute is not a mechanical one. It is more than mire reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result.

In *Manmohan Das v. Bishun Das* a Constitution Bench held as follows:

> **"…The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out."**

The Apex Court has held in ***Promoters & Builders Association of Pune Vs. Pune Municipal Corporation and others***, 2007 (7) Scale 218 as under:

> **"The main challenge of the review petitioners is to the addition of the words "from the very said plot" towards the end of clause (b) in DCR-2.4.11. Learned counsel for the petitioners have submitted that in the proposal sent by the Pune Municipal Corporation after following the procedure prescribed in Sub-Section (1) of Section 37 the aforesaid words were not there. However, the State Government while sanctioning the proposal added the said words which in law it could not do. It has been submitted that the Municipal Corporation had submitted the proposal after inviting objections and after giving an opportunity of hearing and the proposal so made by the Municipal Corporation could not have been modified or altered by the State Government without inviting objections or giving an opportunity of hearing with regard to changes which it proposed to make and which were ultimately made in the notification issued by it. This point has been considered and examined in the judgment and order of this Court dated 5.5.2004. The language of sub-section (2) of Section 37 uses the expression "sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction". The language of the Section is very clear and it**

empowers the State Government to sanction the proposal of the Municipal Corporation regarding modification of Development Control Rules "with or without any changes as it may deem fit." These words are important and cannot be ignored. They have to be given their natural meaning. In Union of India v. Hansoli Devi (2002) 7 SCCF 273 it has been held that it is a cardinal principle of construction of a statute that when the language of the state is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Court to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and the policy of the Act. In *Nathi Devi v. Radha Devi Gupta* (2005) 2 SCC 271 it was emphasized that it is well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislative. The courts always presume that the legislature inserted every part of a statue for a purpose and the legislative intention is that every part of the statute should have effect. In Dr. *Ganga Prasad Verma V. State of Bihar* (1995) Supp. 1 SCC 192 it has been held that where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statue speak the intention of the legislature. Therefore, the view taken by this Court in the judgment and order dated 5.5.2004 that the State Government had full authority to make any changes or add any condition in the proposal of the Municipal Corporation is perfectly correct. In fact, on the plain language of the statute no other view can possible be taken.

The Full Bench of Punjab and Haryana High Court in ***Kesar Chand Vs. State of Punjab*** 1988 (2) PLR 223 observed that the period of the workman i.e. rendered on daily wage post and regular is to be counted for the purpose of Payment of Gratuity Act, 1972: Their Lordships have held as under:

In the light of the above, let us examine the validity of rule 3.17 (ii) of the Punjab Civil Services Rules Vol.II. This rule says that

the period of service in a work charged establishment shall not be taken into account in calculating the qualifying service. After the services of a work-charged employee have been regularized he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the Workmen and the Chief Engineer, PWD (B&R, Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise, the matter was settled by the Punjab Government Memo No. 1409-BRI (3)-72/5383 dated 6th February, 1973 (Annexure P-7) where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularized. Once the services of a work charged employee have been regularized, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularization has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularized subsequently, and the others is not based on any intelligible criteria and, therefore, is not substantial at law. After the services of a work-charged employee have been regularized, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

The Full Bench of Punjab and Haryana High Court was further relied upon by the Single Judge of Punjab and Haryana High Court in ***Hari Krishan Vs. The State of Haryana and others***, 1990 (6) Service Law Reporter 121. His Lordship has held as under:

> **"Before going through into the matter any further, it would be pertinent to mention here that the questions raised in this catena of writ petitioners had earlier come up before a Full Bench of this Court which after elaborate discussion and consideration of various principles observed in Kesar Chand V. State of Punjab through the Secretary, P.W.D. (B&R), Chandigarh and others, 1988 (2) P.L.R. 223 as under:**
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> > **"After the services of a work-charged employee have been regularized he becomes a public servant. The service is under the Government and is paid by it. This is what was precisely stated in the Industrial Award dated June 1, 1972, between the Workmen and the Chief Engineer, PWD (B&R, Establishment Branch, Punjab, Patiala, which was published in the Government Gazette dated July 14, 1972. Even otherwise, the matter was settled by the Punjab Government Memo No. 1409-BRI (3)-72/5383 dated 6th February, 1973 (Annexure P-7) where it was stated that all those work charged employees who had put in ten years of service or more as on 15th August, 1972, their services would be deemed to have been regularized. Once the services of a work charged employee have been regularized, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularization**

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The expression used in section 4 of the Payment of Gratuity Act, 1972 is ***wages last drawn***. By giving a plain meaning to this expression the wages last drawn will be the wages/salary which the workman was getting at the time of retirement. The contention of Mr. Shrawan Dogra, Advocate that the wages last drawn had to be taken for different periods i.e. when the workman is employed on daily wage basis and thereafter on regular basis, is untenable. The workman had remained in continuous service with the employer and it will be impermissible for the employer to work out the wages last drawn of the daily wage period and thereafter to calculate the wages last drawn again when the workman retires after putting up regular service. The entire stretch from the date when the workman is employed up to the date of his retirement is to be calculated and it is reiterated that the wages last drawn in such like situation will be the wages when the workman superannuates.

The Andhra Pradesh High Court in ***Life Insurance Corporation of India, Hyderabad Vs. Regional Labour Commissioner (Central), Hyderabad and others***, 2000 (7) Services Law Reporter-318 has held as under:

"The LIC opposed the cases filed by the employees under section 7 of the Act inter alia objecting the jurisdiction of the authority under the Act to hear the case and also on the ground that LIC employees are not entitled to claim gratuity under the Act, but are entitled for the gratuity under LIC of India Class-I Officers (Revision of terms and Conditions) Rules, 1985 (hereinafter called 'the LIC Rules') as amended from time to time. The LIC also stated before the authority that Class-I Officers are governed by the LIC Rules and therefore the respondent-employee is entitled to claim gratuity at the rate of one month's terminal basic pay for each completed year of continuous service or part thereof in excess of six months subject to a maximum of fifteen months basic pay upto thirty years of service and for service over thirty years, half a month's terminal basic pay for each completed year of service or part thereof in excess of six months. It also stated that as there is no specific Rule in the act for paying gratuity to Class-I Officers of LIC they are not paid the gratuity under the Act and they are paid gratuity under the LIC Rules only.

Aggrieved by the order of the original authority dated 21.9.1998, Zonal Manager of LIC, Hyderabad, preferred an appeal before the appellate authority under sub-section (7) of Section 7 of the Act. The appellate authority by a well reasoned order dated 11.10.1999 rejected the appeal. It was held that the officers of LIC are not exempted from the provisions of the Act and that the LIC Rules are not comprehensive or exhaustive as far as gratuity is concerned. Relying on sub-section (2) of Section 4 of the Act the appellate authority held that the method adopted by the LIC in calculating the gratuity payable to the respondent/employee taking into consideration the last drawn pay of the employee as Class-III official is incorrect. As the Act has overriding effect on other laws agreement, contract etc; and as there is no exemption granted to LIC the promulgation of LIC Rules by itself cannot be treated as exemption from the provisions of the Act.

A reference to the provisions of section 2 (e), 4, 5 and 14 leads to an irresistible conclusion that either Section 48 (2B) of

the LIC Act or the LIC Rules for Class-I Officers do not take away the right of an employee to claim the benefits under the provisions of the Act. Indeed, sub section (5) of Section 4 provides that an employee is entitled to better terms of gratuity other than the gratuity payable under sub section (2) of Section 4 and section 5 enables the appropriate Government to exempt any establishment from the operation of the Act only if the gratuity payable by the LIC is more favourable to the employees than the benefits under the Act.

The Payment of Gratuity Act was enacted in 1972. The LIC Rules were made in 1985 in exercise of powers under clause (cc) of sub section (2) of Section 48 of the LIC ACT as amended by Act 1 of 1981. The said provision in sub-section (2C) of section 48 contains a non obstante clause and gives overriding effect over the Industrial Disputes Act and any other law in force. The LIC Amendment Act being later Act, by virtue of non obstante clause in sub section (2C) of Section 48 of the LIC Act, cannot override the provisions of the Act."

The Hon'ble Supreme Court has held in ***EID Parry (I) Ltd. Versus G. Omkar Murthy and others, (2001) 4 SCC 68*** that both the Acts i.e. Payment of Gratuity Act, 1972 as well as CCS (Pension) Act, 1972 co exist simultaneously. Their Lordships have opined as under:-

"Four contentions are put forth before us, namely, that:

(i) the Central Act prevails over the State Act by virtue of Article 254 of the Constitution and Section 40(3) is invalid and the claims are unsustainable;

(ii) Section 40(3) of the State Act stood repealed on the coming into force of the Andhra Pradesh Shops and Establishment Act, 1988 and gratuity became payable under Section 47(5) of the State Act where payment of gratuity is not payable under the Central Act;

(iii) Section 14 of the Central Act overrides other enactments in relation to gratuity, and

(iv) the respondents have been paid gratuity under the Central Act for the period covered and for the balance period of service gratuity is paid under the prevailing Trust Scheme. At the relevant time when the respondents voluntarily retired from service the definition of "employee" under Section 2(e) of the Central Act read as not to include an employee whose wages exceeds Rs.1000 per mensem while the respondent employees were all getting wages more than Rs.1600 per mensem and, therefore, the Central Act could not be applied. If that is so, it is certainly permissible for the respondents to have made an application for payment of gratuity under Section 40(3) of the State Act. Further the scheme of the Central Act would indicate that it would not be applicable in cases where the State Act is more beneficial than the Central Act. In this case, the finding is that the State Act is more beneficial than the Central Act. Therefore, the contentions sought to be advanced on behalf of the appellant as to repugnancy or otherwise of the State Act would not arise at all. If both the enactments can coexist and can operate where one Act or the other is not available then we find no difficulty in making the State Act applicable on the fact situation available as has been done in the present case. Therefore, we find that the contentions raised on behalf of the appellant are unsustainable."

Their Lordships of the Hon'ble Supreme Court in ***Ahmedabad Pvt. Primary Teachers' Assn. versus Administrative Officer and others, (2004) 1 SCC 755*** have held that the Payment of Gratuity Act is a piece of welfare legislation and its provisions are in the nature of social security measures like employment, insurance, Provident Fund and Pension. Their Lordships have held as under:-

" The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned Judges of the High

Court "gratuity in its etymological sense is a gift, especially for services rendered, or return for favours received". It has now been universally recognized that all persons in society needs protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage-earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions contained in the Act are in the nature of social-security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social security measure to wage-earning population in industries, factories and establishment.

Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of rules of superannuation or physical disablement or impairment of vital part of the body. The expression "gratuity" itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. It is a sort of financial assistance to tide over post-retiral hardships and inconveniences."

Mr. Shrawan Dogra, Advocate has further contended that the workman was not entitled to the interest is also untenable in view of the pronouncement of law by the Hon'ble Supreme Court. The payment of gratuity without interest is not discretionary but it is a statutory compulsion. The Hon'ble Supreme Court in ***H. Gangahanume Gowda versus Karnataka Agro Industries Corpn. Ltd. (2003) 3 SCC 40,*** has held that there is a clear mandate in the provisions of Section 7 to the employer for payment of gratuity within time and to pay interest on the delayed payment of gratuity and there was also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not

paid by the employer in terms of Section 8 of the Act. Their Lordships of the Hon'ble Supreme Court have opined as under:-

"**The learned counsel for the appellant urged that claim for interest on belated payment of gratuity is a statutory right as envisaged under Sections 7 and 8 of the Act; the High Court committed an error in denying the same to the appellant on the ground of discretion on the facts and circumstances of the case. According to the learned counsel, when the appellant on the facts was found to be entitled to interest, he should not have been denied the same.**

The learned counsel for the respondent Corporation argued in support and justification of the impugned order.

In order to appreciate the above contentions urged, it is necessary to notice the provisions of the Payment of Gratuity Act, 1972 (for short "the Act") to the extent they are relevant. They are extracted below:

" *Determination of the amount of gratuity.- (1)* A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section(1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3-A) If the amount of gratuity payable under sub-section(3) is not paid by the employer within the period specified in sub-section(3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify;

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

***Recovery of gratuity*- If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto:**

Provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate:

Provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act."

It is evident from Section 7(2) that as soon as gratuity becomes payable, the employer, whether any application has been made or not, is obliged to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity. Under Section 7(3), the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable. Under sub-section (3-A) of Section 7, if the amount of gratuity is not paid by the employer within the period specified in sub-section (3), he shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits; provided that no such interest shall be payable if the delay in the payment is

due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment **on that ground. From the provisions made in Section 7, a clear command can be seen mandating the employer to pay the gratuity within the specified time and to pay interest on the delayed payment of gratuity. No discretion is available to exempt or relieve the employer from payment of gratuity with or without interest as the case may be. However, under the proviso to Section 7 (3-A), no interest shall be payable if delay in payment of gratuity is due to the fault of the employee and further condition that the employer has obtained permission in writing from the controlling authority for the delayed payment on that ground. Under Section 8, provision is made for recovery of gratuity payable under the Act, if not paid by the employer within the prescribed time. The Collector shall recover the amount of gratuity with compound interest thereon as arrears of land revenue and pay the same to the persons entitled. A penal provision is also made in Section 9 for non-payment of gratuity. Payment of gratuity with or without interest, as the case may be, does not lie in the domain of discretion but it is a statutory compulsion. Specific benefits expressly given in a social beneficial legislation cannot be ordinarily denied. Employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest was the view taken in *State of Kerala v. M. Padmanabhan Nair.* Earlier there was no provision for payment of interest on the delayed payment of gratuity. Sub-section (3-A) was added to Section 7 by an amendment, which came into force with effect from 1-10-1987. In the case of *Charan Singh v. Birla Textiles* this aspect was noticed in the following words; (SCC pp. 214-15, para 4.**

"There was no provision in the Act for payment of interest when Collector was approached for its realization. In fact, it is on the acceptance of the position that there was

a lacuna in the law that Act 22 of 1987 brought about the incorporation of sub-section (3-A) in Section 7. That provision has prospective application."

In the background of this legal position, now we turn to the facts of the present case. The appellant was under suspension from 15-3-1999 to 21-5-1999. On attaining the age of superannuation, he retired from service of the respondent Corporation on 1-1-2000. The learned Single Judge, after considering the rival contentions, disposed of the writ petition issuing directions to the respondent Corporation to settle the full salary and allowances for the period of suspension, gratuity, cash equivalent to leave salary, deferred leave, concession amount etc. As regards the claim of interest on gratuity, the learned Single Judge held as under:

> **"Since there was a doubt as to whether the petitioner is entitled to the gratuity, cash equivalent of leave salary etc., in view of the divergent opinion of the courts during the pendency of an enquiry proceedings of a retired employee, in my view, the petitioner is not entitled to the relief of interest for the belated payment of gratuity and other amounts."**

It is clear from what is extracted above that from the order of the learned Single Judge that interest on delayed payment of gratuity was denied only on the ground that there was doubt whether the appellant was entitled to gratuity, cash equivalent to leave etc., in view of divergent opinion of the courts during the pendency of enquiry. The learned Single Judge having held that the appellant was entitled to payment of gratuity was not right in denying the interest on the delayed payment of gratuity having due regard to Section 7 (3-A) of the Act. It was not the case of respondent that the delay in the payment of gratuity was due to the fault of the employee and that it had obtained permission in writing from the controlling authority for the delayed payment on that ground. As noticed above, there is a clear mandate in the provision of Section 7 to the employer for payment of gratuity within time and to pay

interest on the delayed payment of gratuity. There is also provision to recover the amount of gratuity with compound interest in case the amount of gratuity payable was not paid by the employer in terms of Section 8 of the Act. Since the employer did not satisfy the mandatory requirements of the proviso to Section 7(3-A), no discretion was left to deny the interest to the appellant on belated payment of the gratuity. Unfortunately, the Division Bench of the High Court, having found that the appellant was entitled to interest, declined to interfere with the order of the learned Single Judge as regards the claim of interest on delayed payment of gratuity only on the ground that the discretion exercised by the learned Single Judge not be said to be arbitrary. In the first place in the light of what is stated above, the learned Single Judge could not refuse the grant of interest exercising discretion as against the mandatory provisions contained in Section 7 of the Act. The Division Bench, in our opinion, committed an error in assuming that the learned Single Judge could exercise the discretion in the matter of awarding interest and that such a discretion exercised was not arbitrary."

The workman had continuously worked with the petitioner-Board initially on daily wages and thereafter on regular basis and thus he always remained in continuous service of the petitioner-Board.

The upshot of the above discussion is that the order passed by the appellate authority dated 16th November, 2002 cannot be faulted with. The entire period rendered by the workman with effect from 1983 to 1998 is to be counted for the purpose of determining the gratuity under the Payment of Gratuity Act, 1972. The workman is entitled to get the gratuity on the basis of last pay drawn by him i.e. Rs. 4239/- at the time of superannuation. The order passed by the appellate authority allowing interest with effect from 1st February, 1999 cannot be interfered in view of the law laid down by the Hon'ble Supreme Court as cited above.

Accordingly the writ petition is dismissed. The appellate order dated 16th November, 2002 is upheld. The Board is directed to release the gratuity as directed by the appellate authority within a period of 6 weeks from the date of receipt of certified copy of this judgment. The workman is entitled to costs which are quantified at Rs. 3,300/-.

(Rajiv Sharma), Judge

June 1, 2007
Awasthi